

### **REMARKS**

This submission is responsive to the final Office Action dated April 1, 2009. Claims 1–10, 12–15, and 19–21 are pending.

#### **Objection to the Specification Under 35 U.S.C. § 132(a)**

In the final Office Action, the Examiner objected to the Amendment filed on April 11, 2008 (referred to in the Office Action filed on August 20, 2008) under 35 U.S.C. § 132(a) on the basis that it introduces new matter into the disclosure. In particular, the Office Action stated that “The added material which is not supported by the original disclosure is as follows: an overmold that integrates modules into a desired form factor, but, where flexible, allows relative intermodule motion.”<sup>1</sup> Applicant respectfully disagrees that the amendment to the specification made via the Amendment filed on April 11, 2008 introduces new matter.

With the Amendment filed on April 11, 2008, Applicant amended paragraph [0033] of the specification to specify that the “[o]vermold 106 integrates modules 103, 104 into a desired form factor, but, where flexible, allows relative intermodule motion.” This amendment to the specification is fully supported by Applicant’s disclosure as originally filed. For example, the disclosure as originally filed incorporated U.S. Patent Application Serial No. 10/731,881 by reference in its entirety.<sup>2</sup> U.S. Patent Application Serial No. 10/731,881 describes an overmold that integrates modules of a modular implantable medical device into a structure, where the overmold is flexible and allows intermodule motion.<sup>3</sup> As noted in the MPEP, incorporated information should be treated as part of the text of the application as-filed.<sup>4</sup>

The amendment to the specification made via the Amendment filed on April 11, 2008 is fully supported by Applicant’s disclosure as originally filed and does not add new matter. Applicant respectfully requests withdrawal of the objection to the specification.

#### **Claim Rejection Under 35 U.S.C. § 112**

In the final Office Action, claims 1–10, 12–15, and 19–21 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office

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<sup>1</sup> Final Office Action dated April 1, 2009 at p. 2, item 1.

<sup>2</sup> Applicant’s disclosure at paragraph [0002].

<sup>3</sup> See U.S. Patent Application Serial No. 10/731,881 at paragraph [0009].

<sup>4</sup> MPEP 2163.07(b).

Action asserted that claim 1, 9, and 19 contain “subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.”<sup>5</sup>

Applicant respectfully disagrees with the rejection of the claims under 35 U.S.C. § 112, first paragraph.

With respect to independent claims 1 and 9, the Office Action stated that support “for an overmold that integrates modules into a desired form factor, but, where flexible, allows relative intermodule motion” could not be found in the originally-filed disclosure.<sup>6</sup> As noted above, Applicant amended the specification via the Amendment filed on April 11, 2008 to specify that the “[o]vermold 106 integrates modules 103, 104 into a desired form factor, but, where flexible, allows relative intermodule motion.” The amendment to the specification did not add new matter to the application because it was fully supported by the application as-filed, e.g., via the incorporation of U.S. Patent Application Serial No. 10/731,881 by reference in its entirety. In addition, Applicant submits that the amendment to claims 1 and 9 made via the Amendment filed on April 11, 2008 was fully supported by, e.g., paragraphs [0043] and [0045], of the disclosure as originally-filed.

With respect to claim 19, the Office Action stated that support for a hermetic housing of a control module could not be found in the originally-filed disclosure. Applicant respectfully disagrees. Applicant added claim 19 via an Amendment filed in May 21, 2007. In the Amendment of May 21, 2007, Applicant amended paragraphs [0031] and [0032] of the disclosure to discuss hermetically sealed housings as described, for example, at paragraphs [0062]-[0064] in co-pending U.S. Patent Application Serial No. 10/731,869, which Applicant incorporated by reference in its entirety in the originally-filed application.

For at least these reasons, Applicant’s disclosure as originally-filed clearly conveys that Applicant had possession of the claimed invention at the time the application was filed and provides support for claims 1–10, 12–15, and 19–21. Applicant respectfully requests reconsideration and withdrawal of the rejection to the claims under 35 U.S.C. § 112, first paragraph.

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<sup>5</sup> Final Office Action dated April 1, 2009 at p. 2, item 3.

<sup>6</sup> *Id.* at p. 2, item 3.

**Claim Rejection Under 35 U.S.C. §§ 102 and 103**

In the final Office Action, claims 1–5, 8–10, 12, 13, 15, and 19–21 were rejected under 35 U.S.C. § 102(a/e) as being unpatentable over Berrang et al. (U.S. Patent No. 6,358,281, hereinafter “Berrang”), or in the alternative, under 35 U.S.C. § 103(a) over Berrang in view of Correas (U.S. Patent No. 6,112,120). In addition, claims 6, 7, and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berrang in view of Correas.

Applicant respectfully traverses the rejection of the claims. Berrang, alone or in view of Correas, fails to disclose each and every feature of the claimed invention, and provides no teaching that would have suggested the desirability of modification to include such features. Applicant maintains the remarks made in the Amendment filed on April 11, 2008 with respect to the rejection of the claims as being unpatentable over Berrang. In addition, Applicant notes that Correas fails to cure the deficiencies in Berrang identified in the Amendment filed on April 11, 2008.

It is unclear why one having ordinary skill in the art at the time of the invention would have looked to Correas to modify the Berrang device. The Office Action reasoned that it would have been obvious to modify Berrang “by providing a lead that is manually separable and reattachable to a lead connection module to provide the predictable result of allowing convenient immobilization of a lead on a generator by a surgeon without risk of inopportune disconnection.”<sup>7</sup> Applicant respectfully disagrees with the conclusion of obviousness. The rationale provided in the Office Action lacks a rational underpinning, and, therefore, is insufficient to support the conclusion of obviousness.<sup>8</sup>

The cited art fails to provide any basis for the rationale that the Berrang device allows for a “risk of inopportune disconnection” of a lead, as asserted by the Office Action. Indeed, as noted in the Amendment filed on April 11, 2008, Berrang fails to disclose a device that is configured to accept an external lead that is separable from a lead connection module, as required by independent claims 1 and 9. Based on the Berrang reference, the junction 16 (characterized as a “lead” by the Office Action) of Berrang is not separable from the bridge structure 6 (characterized as the “lead connection module” by the Office Action). Thus, it appears that the Berrang device does not necessarily have any more of a “risk of inopportune

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<sup>7</sup> *Id.* at p. 5 item 8.

<sup>8</sup> *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

disconnection” than the Correas device. As a result, the proposed rationale for modifying Berrang in view of Correas the manner proposed by the Office Action lacks a rational underpinning.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant’s claims 1–10, 12–15, and 19–21 under 35 U.S.C. §§ 102(a/e) and 103(a). Reconsideration and withdrawal of the rejection of the claims are respectfully requested

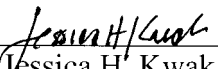
### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: May 29, 2009

SHUMAKER & SIEFFERT, P.A.  
1625 Radio Drive, Suite 300  
Woodbury, Minnesota 55125  
Telephone: 651.286.8346  
Facsimile: 651.735.1102

By:

  
Name: Jessica H. Kwak  
Reg. No.: 58,975